

Request for discussion papers on Maori leadership which were no longer publicly available

Legislation	Official Information Act 1982, ss 9(2)(g)(i), 48
Agency	Minister of Maori Affairs
Ombudsman	Sir John Robertson
Case number(s)	W4371
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Request for discussion papers on Maori leadership which had been made available to the media—request refused by Minister of Maori Affairs under s 9(2)(g)(i)—no longer publicly available but issue of defamation action raised—section 48 effectively protects the Crown from defamation proceedings in respect of information which is made available in good faith under the OIA

The information at issue in this case comprised documents which had been prepared as discussion papers and had been circulated amongst various iwi organisations for comment. The purpose of the papers was to promote comment and discussion. They had, in fact, been released to the media and this had resulted in considerable publicity in respect of certain statements made in them. Although the information was no longer publicly available, given the background circumstances, it was concluded that the information could not be said to require protection in terms of the OIA.

However, in view of some of the more controversial statements in the papers, concerns were also expressed about possible defamation action being taken by aggrieved parties. Such a possibility is addressed in section 48 of the OIA. This section effectively protects the Crown from defamation proceedings in respect of information which is made available in good faith under the OIA. Section 48(1)(a) expressly provides that no action would lie in defamation against the Crown or any other person through making information available under the Act. Section 48(1)(b) provides that same protection to the authors of the reports. Section 48(2), however, makes it clear that such protection would not extend to anything that a requester or subsequent parties, such as a newspaper, does with information made available under the Act.

Comment

The Court of Appeal in *Attorney-General v Davidson* [1994] 3 NZLR 143 at page 148 held that section 48(1)(b) of the OIA was aimed at protecting the author of the information or any other person who had originally supplied the information. It was intended to make clear that merely by supplying the original information such persons did not become liable for any publications involved in or resulting from its subsequent making available under the Act. The legislation stopped short of conferring immunity for the original supply alone.

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